

BEFORE THE GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS



IN THE MATTER OF:

FRANK B. CRUZ,

Employee,

VS.

GUAM FIRE DEPARTMENT,

Management.

ADVERSE ACTION APPEAL CASE NO. 16-AA17S

DECISION AND JUDGMENT

I.

INTRODUCTION

The Civil Service Commission met at its regularly scheduled time on February 21, 28, and March 2, 2017, at 5:45 p.m. Present for Employee was Daniel Del Priore of the Guam Federation of Teachers. Present for Management was Fire Chief Joey San Nicolas who also acted as representative. By a vote of 6-0 the Commission found that Management met its burden and upheld the ten (10) day suspension of Employee.

II.

FINDINGS OF FACT

1) On or about the morning of Friday, September 18, 2015, while off-duty and at home, Employee Frank B. Cruz was physically abusive to one of his daughters. The physical abuse was accompanied by verbal abuse as well

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1	2) The abuse was witnessed to some extent by some of his other, younger children.
2	3) Later that day, the younger children were overheard discussing the abuse at their
3	school. This caused school personnel to contact the Guam Police Department ("GPD").
4	4) On the following Monday, September 21, 2015, the abused daughter was examined
5	and bruises were found on her arms and legs.
6	5) Based upon interviews conducted, this was not an isolated incident limited to one
7	family member. Escalating behavior was indicated.
8	6) On November 5, 2015, Employee Cruz was taken in for questioning and/or arrested
9	by GPD in relation to the September incident, around 1 P.M. while he was on-duty at the Inarajan
10	Fire Station.
11	7) The absence of Employee Cruz due to leaving with GPD on November 5, 2015, left
12	the Inarajan Fire Station under-staffed.
13	8) Prior to November 5, 2015, Management at GFD was unaware of the September
14	incident.
15	III.
16	<u>JURISDICTION</u>
17	The jurisdiction of the Civil Service Commission is based upon the Organic Act, Title 4 of
18	the Guam Code Annotated §§ 4401, et seq., and the relevant Personnel Rules and Regulations.
19	IV.
20	<u>ANALYSIS</u>
21	The underlying facts of this case are largely not in dispute.
22	Employee has admitted to being physical with his child. There were a variety of excuses
23	offered, such as this is how he was raised, or that his children are successful in school and stayed
24	out of trouble. We find these inadequate justifications.

Employee has also argued that a suspension ultimately harms the children as well. The gap in pay from the suspension only means that he does not have as much money to provide for his family. While this might be an unfortunate side effect, the Guam Fire Department is limited in its menu of disciplinary options available. It should be noted that an action such as a suspension is not a retributivist punishment, but rather a corrective tool. It is designed to demonstrate to the Employee that their behavior is unacceptable, and must not be repeated in the future.

During closing arguments, Employee strenuously argued that an employee cannot be punished for off-duty conduct that took place in the privacy of their own home. We disagree. First, it should be noted that while the physical acts might have taken place in the home while off-duty, there were ripple effects outside the home. There were bruises that remained days later while the child went to school. Employee's children discussed the incident with others. School personnel in multiple schools became involved. A police investigation was launched.

As a result of the physical abuse, Employee was taken from his station. This left the station dangerously undermanned. While the Employee argues that the police could have elected to question him at a different time, it is reasonably foreseeable that physically abusing one's child could result in a police investigation that interfered with your shift.

It is not correct that government employees cannot be disciplined for off-duty conduct that takes place in their home. For example, in *Anderson v. State Personnel Bd.* (1987) 194 Cal. App. 3d 761, 722 [239 Cal. Rptr. 824], an off-duty highway patrol officer was terminated for bringing "embarrassment and discredit to the law enforcement agency he served," when he indiscreetly exposed himself in the window of his home in view of the neighbors. While the underlying conduct here is very different, the point remains that off-duty conduct occurring in one's home can be disciplined based on its effects.

IV.

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HOLDING

By a vote of 6-0 the Commission finds that Management met its burden of proof. The Employee's appeal is denied.

SO ADJUDGED THIS 220 day of June 2017.

EDITH PANGELINAN Chairperson Vice-Chairperson

JOHN \$MITH Commissioner Commissioner

Not Present Not Present

CATHERINE GAYLE MICHAEL G. TOPASNA Commissioner Commissioner